

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	:	
MICHAEL K. HERRON,	:	Case No. 19-24527-TPA
<i>Debtor</i>	:	
	:	Chapter 11
MICHAEL K. HERRON,	:	
<i>Plaintiff</i>	:	Adv. No. 20-02132-TPA
	:	
v.	:	Related to Doc. Nos. 15, 17
	:	
WELLS FARGO BANK NATIONAL	:	Hrg.: May 11, 2021 at 10:00 AM
ASSOCIATION, as trustee for BANC OF	:	(if necessary)
AMERICA ALTERNATIVE LOAN	:	
TRUST 2005-11 MORTGAGE PASS-	:	
THROUGH CERTIFICATES, SERIES	:	
2005-11,	:	
<i>Defendant</i>	:	

Order

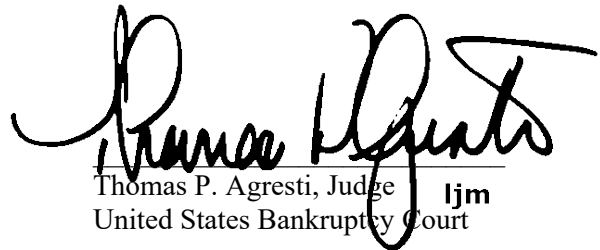
On April 6, 2021 the Defendant filed a ***Defendant's Motion to Dismiss Under F.R.C.P. 12(b)(6)*** ("Motion") at Doc. No. 23, together with a brief and supporting exhibits at Doc. No. 24. The Court will dismiss these documents for two reasons. First, an incorrect caption appears on the *Motion* and brief. All filings within an adversary proceeding are to use the same caption, but here the Defendant has modified the caption to list itself first, and as "Movant/Defendant," with the Debtor shown as "Plaintiff/Respondent." *See, W.D. Pa. LBR 7008-1(b)*. Second, the *Motion* indicates that it is being brought pursuant to *F.R.C.P. 12(b)(6)*, but such a motion "must be made before pleading if a responsive pleading is allowed." Here, a responsive pleading was allowed and the Defendant previously filed an Answer, *see* Doc. No. 12, so the *Motion* is untimely and precluded, at least in its current form. Because it appears that the substance of the *Motion* may properly be brought by way of another type of motion that would be allowed but for the April 6th deadline for filing preliminary motions, and because the *Motion* was filed within that deadline, the Court will grant a brief window within which the Defendant may attempt to refile.

AND NOW, this 8th day of *April, 2021*, it is **ORDERED, ADJUDGED** and **DECREED** that,

(1) The *Motion* and brief, Doc. Nos. 23 and 24, are **DISMISSED**.

(2) ***On or before April 14, 2021*** the Defendant may file a preliminary motion in proper form. Defendant is advised that if it files a motion for summary judgment such motion must comply with the requirements of *Judge Agresti General Procedure 12*.

(3) In the event the Defendant timely files a preliminary motion pursuant to Paragraph 2 of this Order the Debtor shall file his response and any supporting brief ***on or before May 5, 2021***, and such motion will be considered at the same time as the Final Pretrial Conference scheduled for ***May 11, 2021 at 10:00 A.M.***



Thomas P. Agresti, Judge **ljm**
United States Bankruptcy Court

Case administrator to serve:
Aurelius Robleto, Esq.
Kristen D. Little, Esq.
Debtor